

Melissa N. Licker
McCalla Raymer Leibert Pierce, LLC
99 Wood Avenue, Suite 803
Iselin, NJ 08830
Telephone: (732) 902-5399
NJ_ECF_Notices@mccalla.com
Attorneys for Secured Creditor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
Alexander J Figliolia,	Case No. 17-20755-MBK
	Hearing Date: August 2, 2018 10:00 am
Debtor.	Judge: Michael B. Kaplan

OBJECTION TO PLAN CONFIRMATION

THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK as Trustee for CHL Mortgage Pass-Through Trust 2003-48 Mortgage Pass-Through Certificates, Series 2003-48 by Nationstar Mortgage LLC, the servicing agent (the "Secured Creditor"), by its counsel, McCalla Raymer Leibert Pierce, LLC, states the following grounds as and for an Objection to Confirmation of the Debtor's Chapter 11 plan (the "Plan"):

1. Secured Creditor is an impaired class whose treatment is outlined as Class #1 in the Plan. Secured Creditor rejects the Plan as proposed.
2. Secured Creditor holds the perfected first mortgage on Debtor's real property; the property known as 105 Middletown Road, Holmdel, NJ 07733 (the "Property"). On June 3, 2003, Alexander J Figliolia (the "Debtor") borrowed \$2,390,000.00 in exchange for a mortgage on the Property (the "Mortgage"). The Mortgage was recorded prepetition on June 24, 2003 in the

Monmouth County Clerk's Office. The Debtor's mortgage loan with Secured Creditor was modified in 2014 in an agreement that capitalized substantial arrears, the unpaid balance was increased to \$2,955,439.23 and provided a two-year interest-only period that expired in April 2016. A proof of claim has been filed with the default beginning almost immediately after that interest-only period expired with arrears of \$293,732.02 on a total claim of \$3,136,294.00.

3. Debtor's Plan provides for a monthly interest payments at a rate of 4.0%. Secured Creditor objects to this proposed interest rate being too low to account for the risk associated with this loan that is contractually due for the July 2016 payment. Secured Creditor also deems the proposed rate of 4.0% below market rate in this time of rising interest rates. *See e.g. Till v. S.C.S. Credit Corp.*, 124 S. Ct. 1951 (2004).

4. Further, the Plan does not address interest that has accrued since petition filing some fourteen months ago on May 25, 2017 or any additional advances that have been made for taxes and insurance. Secured Creditor asserts that these amounts are due and owing and does not consent to any waiver of such amounts as may be implied by the silence in the Plan. Secured Creditor also seeks to maintain the escrow account and receive payments pending the sale or refinance of the Property, as the Debtor does not propose to make any payments toward principal. As provided for in the filed proof of claim, monthly tax payments alone are currently \$7,242.26. While the sale is pending, Secured Creditor seeks to retain or improve its equity position and does not wish to endanger its lien position by relying on the Debtor's self-payment of amounts that will become due. Absent clarification on all of the above issues, the Plan as proposed cannot be confirmed.

5. The Debtor's Plan is dependent upon the sale or some unknown funding mechanism occurs up to twenty-four (24) months after the effective date of the Plan. The sale of such of a

costly home at the current alleged value is far from certain. This proposal is speculative and the proposed interest rate does not sufficiently reward Secured Creditor for risk involved with the proposed Plan treatment.

WHEREFORE, Secured Creditor rejects the treatment of Class #1 in the Plan and respectfully requests that the Court deny confirmation of the Debtor's Chapter 11 Plan for the reasons set forth above and for other relief as the Court may deem just and proper.

Dated: July 26, 2018

McCalla Raymer Leibert Pierce, LLC
Attorneys for THE BANK OF NEW YORK
MELLON f/k/a THE BANK OF NEW YORK
as Trustee for CHL Mortgage Pass-Through
Trust 2003-48 Mortgage Pass-Through
Certificates, Series 2003-48 by Nationstar
Mortgage LLC, the servicing agent

/s/ Melissa N. Licker

By:
Melissa N. Licker